



March 25, 2002

Mr. Michael J. Burns
Supervising Attorney
Information Release
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2002-1472

Dear Mr. Burns:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160273.

The Texas Workforce Commission ("TWC") received a request for documents relating to Distributed Computing Specialists ("Distributed") and two named individuals associated with Distributed. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We begin by noting that you have not complied with section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.
- (b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You indicate that the commission received the instant request for information on October 18, 2001. Furthermore, you state that you inadvertently included a copy of this request in separate correspondence with our office. The deadline for requesting a decision from our office was November 1, 2001. Because you did not request a decision on this request until January 16, 2002, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). A compelling reason for overcoming the presumption of openness exists when the information is excepted from disclosure under section 552.101 of the Government Code. *See* Open Records Decision No. 150 (1977).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 301.081 of the Labor Code reads in part as follows:

- a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of this title. The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.
- b) The commission may require from an employing unit sworn or unsworn reports regarding persons employed by the employing unit as necessary for the effective administration of this title.
- c) Employment information thus obtained or otherwise secured may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the proper administration of this title.

Labor Code § 301.081. This office interpreted the predecessor provision of section 301.081(c) to apply to information the commission obtained from the records and reports that employers are required to file with the commission. *See* Open Records Decision No. 599 (1992) (construing former V.T.C.S. art. 5221b-9). You state that the information in question was submitted to TWC by an employer in quarterly unemployment tax reports, as required by statute. Based on your argument and our review of the submitted information, we agree

that the information is confidential under section 301.081 of the Labor Code and must be withheld under section 552.101 of the Government Code. *See* Labor Code § 301.081; Open Records Decision No. 599 (1992).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

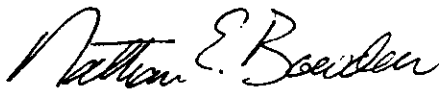
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Nathan E. Bowden". The signature is written in a cursive, flowing style.

Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 160273

Enc: Submitted documents

c: Ms. Jennifer Piskun
Graves, Dougherty, Hearon & Moody
515 Congress Avenue, Suite 2300
Austin, Texas 78701
(w/o enclosures)